

**IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION** **FILED**
STATE OF OKLAHOMA

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)

 Plaintiff,)

v.)

WESLEY E. POPE, M.D.,)
LICENSE NO. 17440,)

 Defendant.)

MAR 08 2013

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 12-05-4544

VOLUNTARY SUBMITTAL TO JURISDICTION

Plaintiff, the State of Oklahoma, ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Scott Randall Sullivan, Special Counsel for the Board and the staff of the Board, as represented by the Secretary of the Board, Gerald C. Zumwalt, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, Wesley E. Pope, M.D. Oklahoma license no. 17440, who appears in person and through counsel, Linda G. Scoggins, offer this Agreement for acceptance by the Board en banc pursuant to Section 435:5-1-5.1 of the Oklahoma Administrative Code. ("OAC").

AGREEMENT AND ACKNOWLEDGMENT BY DEFENDANT

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations set forth herein from, and in resolution of, the Complaint and Citation filed herein on June 15, 2012, and further acknowledges that a hearing before the Board would likely result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act").

Defendant, Wesley E. Pope, M.D., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his right to a full hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions stated herein, and that this Agreement has been reviewed and discussed with him and his legal counsel.

PARTIES' AGREEMENT AND STIPULATIONS

Plaintiff, Defendant and the Board staff stipulate and agree and follows:

Findings of Fact

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §§480 *et seq.*

2. Defendant Wesley E. Pope, M.D., holds Oklahoma license no. 17440 and at the time of the events in question, practiced family medicine in Newcastle, Oklahoma.

3. Defendant was subject to a disciplinary action in 2008 based, in part, on the following facts: Beginning in or around 2001 and continuing through approximately 2004, Defendant engaged in a doctor-patient relationship, including prescribing controlled dangerous substances to him, with an individual with whom he had been involved in a sexual/romantic relationship since 1999. In 2007, when questioned by Board investigators about the sexual relationship with the patient, Defendant lied and denied that it existed. However, when presented with corroborating evidence, Defendant eventually admitted that he was involved in a sexual relationship with the patient.

4. Based upon those facts as well as additional violations of the Medical Practice Act, the Board accepted an Order Accepting Voluntary Submittal to Jurisdiction whereby Defendant was SUSPENDED for a period of NINETY (90) DAYS to be followed by a FIVE (5) YEAR PROBATION beginning May 15, 2008.

5. The Order Accepting Voluntary Submittal to Jurisdiction sets forth Defendant's terms of probation and provides that Defendant shall be on probation as follows:

(X) Defendant shall not engage in any dual relationships, personal or sexual/romantic contacts with any patients or key third parties, including but not limited to the spouses, partners, parents, children, guardians or proxies of his patients.

6. The provision cited above has not been modified or deleted but remains in full force and effect as terms and conditions of Defendant's probation.

7. On or about August 25, 2011, Defendant began treating Patient BBD for alleged back pain. Patient BBD had previously been treated by Steve Schoelen, M.D., Defendant's practice partner. While Dr. Schoelen was not practicing, Defendant took over Patient BBD's care. Patient BBD was subject to pain management agreements and protocols of Defendant.

8. On or about May 10, 2012, Norman Police officers found a twenty-seven (27) year old male, Patient BBD sitting in his car in the center median of I-35 in Norman, Oklahoma. Patient BBD appeared to be severely impaired and under the influence of intoxicants. At the time he was found, he had several prescription bottles of opiate pain killers in his car, all of

which were prescribed by Defendant. Later that day, both Patient BBD and his parents allowed the police to review the text messages on his phone.

9. Text messages still on Patient BBD's phone covered the period of April 25, 2012 through May 10, 2012 and indicated that Patient BBD was illegally buying and selling prescription drugs. The text messages also included numerous messages between Defendant's cell phone number and Patient BBD's cell phone where references were made to the patient's medical care, prescription dosages and prescriptions to be picked up by Patient BBD.

10. The text messages between the cell phone numbers also indicated that Patient BBD and Defendant, or someone with access to Defendant's cell phone, had been exchanging numerous graphic sexually explicit messages.

11. On Friday, May 11, 2012, Board investigator Robert DuVall went to Defendant's clinic in Newcastle to obtain the medical records of Patient BBD and speak with Defendant. Defendant was not at his clinic, but investigator Robert DuVall spoke with Defendant by phone, telling Defendant he had questions regarding patient BBD and that he was taking BBD's medical chart with him. Because Patient BBD was a pain patient, Defendant inquired as to his well being in light of the Board taking his chart. Defendant was told that Patient BBD was fine and the investigator made arrangements to meet with Defendant at the clinic on Monday, May 14, 2012.

12. On or about May 11, 2012, pursuant to the authority granted to him under 59 O.S. §506(B), Lyle R. Kelsey, Executive Director of the Oklahoma State Board of Medical Licensure and Supervision, had summarily suspended Defendant's license based upon an alleged violation of probation.

13. May 14, 2012, Board investigator Robert DuVall interviewed Defendant. When asked if he had had any out of the office contact with Patient BBD, Defendant stated that he had only called him on issues related to his medical care. When confronted with some of the sexually graphic text messages sent from his phone to the patient, Defendant admitted that he may have made social comments to the patient, but that he would not answer any more questions without contacting his attorney.

14. At that point, Board investigator DuVall asked Defendant to allow him to examine his telephone for text messages to Patient BBD. Defendant advised Investigator DuVall that his phone was not available because it had been accidentally run over with his tractor over the weekend. Defendant was unaware at that time of the extent of the text messages or that his partner, RDT, had intentionally destroyed his cell phone. Investigator DuVall also delivered to Defendant the notice that his license was summarily suspended.

15. The Board asserted that the sexually graphic text messages must have been between Defendant and Patient BBD because they were sent from and received by Defendant's cell phone. Defendant asserted that the sexually graphic text messages between Patient BBD and his cell phone were not his messages, but the messages of his partner, RDT, to whom he had allowed access to his cell phone and, therefore, confidential medical information.

16. The summary suspension which was entered on May 11, 2012, continued for 122 days, until September 13, 2012, and was reported to the NPDB as a suspension because of sexually contacting a patient. The report should have stated that the summary suspension was because of allegations of such conduct.

17. On or about January 7, 2013, the Board asked that Defendant voluntarily agree to not practice until such time as he could have an assessment/evaluation conducted by a facility that was Board-approved for assessment and treatment of sexual and/or boundary issues, agree to follow the recommendations of the facility, and appear before the Board after the assessment/evaluation for a hearing or pursuant to a VSJ. Defendant agreed and commenced the process of locating and making arrangements for the requested assessment/evaluation at a facility approved by the Board. It was finally determined, with the Board's approval, that Defendant would have the assessment/evaluation at Promises Treatment Center and its affiliated facility, Sexual Recovery Institute, both located in the state of California.

18. Defendant was admitted for the assessment/evaluation on January 21, 2013 and a report of the evaluation was issued on January 25, 2013. The report stated that Defendant's assertion that he had **not** engaged in any inappropriate behavior with Patient BBD, including inappropriate text messaging, had been corroborated during the evaluation process. It was also found that Defendant should continue and/or begin various steps to avoid future boundary issues.

19. The evaluation team at Promises found Defendant fit to return to work and made the following recommendations:

- a) continue psychotherapy to address anxiety disorder, personal and professional boundaries and coping skills;
- b) continue biofeedback training and structured relaxation exercises;
- c) continue to maintain a separate cell phone for work related issues and avoid texting or emailing with patients;
- d) participate in the Professional Boundaries Maintenance and Accountability Seminars weekly for at least 12 weeks; and
- e) participate in couples counseling with significant other.

20. The Board finds that Defendant should follow the recommendations of the evaluation team at Promises and Defendant so agrees. The Board also finds and the Defendant agrees to promptly report and document his compliance with the recommendations in Paragraph 18 above to the appropriate Board Staff.

21. Defendant is guilty of unprofessional conduct in that he:

A. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

B. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36).

C. Willfully betrayed a professional secret to the detriment of the patient. 12 O.S. §509(3).

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act") and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

2. Based on the foregoing facts, Defendant, Wesley E. Pope, M.D., Oklahoma license no. 17440, is guilty of the unprofessional conduct set forth below:

A. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

B. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36).

C. Willfully betrayed a professional secret to the detriment of the patient. 12 O.S. §509(3).

Order

IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.

2. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Wesley E. Pope, M.D., holding Oklahoma license No. 17440, was summarily **SUSPENDED** for a period commencing May 14, 2012, and ending September 13, 2012, for a total of 122 days based on a suspicion and/or allegation of violation of a board order.

3. Defendant's **PROBATION**, including the Probation Order of May 15, 2008 and the terms thereof shall be extended an additional seven (7) months to December 15, 2013.

4. Defendant will conduct his/her practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Board. Any question of interpretation regarding the Act or this order shall be submitted in writing to the Board, and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Board or its designee.

5. Defendant will furnish a copy of this order to each and every state in which he/she holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he/she holds or anticipates holding any form of staff privileges or employment.

6. Defendant will not supervise allied health professionals that requires surveillance of a licensed physician.

7. Defendant will keep the Board informed of his/her current address.

8. Defendant will keep current payment of all assessment by the Board for prosecution, investigation and monitoring of his/her case unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

9. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

10. Defendant shall make himself/herself available for one or more personal appearances before the Board or its designee upon request.

11. Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or designee.

12. Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Coordinator to obtain copies of medical records and authorize the Compliance Coordinator to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.

13. Failure to meet any of the terms of your Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify license after due notice and hearing.

14. As additional terms of probation, Defendant shall follow the recommendations of the evaluation team at Promises as set forth in paragraph 19 of the Findings of Fact above which are as follows:

a) continue psychotherapy to address anxiety disorder, personal and professional boundaries and coping skills;

- b) continue biofeedback training and structured relaxation exercises;
- c) continue to maintain a separate cell phone for work related issues and avoid texting and/or or emailing with patients. Defendant shall not allow RDT to have any access to any cell phone that he uses in any way for work purposes;
- d) participate in the Professional Boundaries Maintenance and Accountability Seminars weekly for at least 12 weeks; and
- e) participate in couples counseling with significant other.

15. Defendant shall not allow his partner, RDT, to work or participate in any way in his medical practice, including the billing for services provided in the practice, whether on a paid or unpaid basis. RDT shall not be allowed in the medical offices and shall have no access to patients or their records, medical office phones, and/or other medical office communication devices.

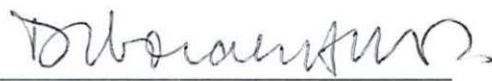
16. Defendant shall not engage in *any* dual relationships, personal or sexual/romantic contacts with any patients or key third parties, including but not limited to the spouses, partners, parents, children, guardians or proxies of his patients.

17. Defendant will not engage in *any* texting, emailing, or be involved in *any* form of social media with any patients or key third parties, including but not limited to the spouses, partners, parents, children, guardians or proxies of his patients.


18. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, reasonable legal fees and investigation costs.

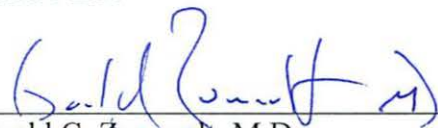
19. A copy of this written order shall be sent to Defendant as soon as it is processed.

Dated this 7th day of March 2013.

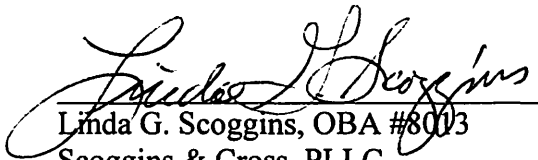

 Deborah Huff, M.D., President
 Oklahoma State Board of
 Medical Licensure and Supervision

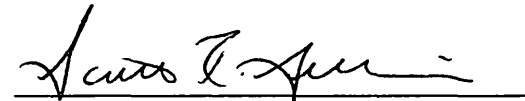
AGREED AND APPROVED:


 Wesley E. Pope, M.D.
 License No. 17440


 Gerald C. Zumwalt, M.D.
 Secretary & Medical Advisor
 Oklahoma State Board of


Medical Licensure and Supervision


Linda G. Scoggins, OBA #8003
Scoggins & Cross, PLLC


Scott Randall Sullivan, OBA #11179
Special Prosecutor
Oklahoma State Board of
Medical Licensure and Supervision

CERTIFICATE OF MAILING

This is to certify that on the 8th day of March, 2013, a true and correct copy of the above and foregoing Voluntary Submittal to Jurisdiction was mailed to Linda Scoggins, SCOGGINS & CROSS, 201 Robert S. Kerr, Suite 710, Oklahoma City, OK 73102, with postage prepaid thereon.


Barbara J. Smith, Legal Assistant